UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

CASE NO. 05-9886-3P7

MARK C. JACKSON

Debtor.
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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Case is before the Court upon Debtor's Motion for Sanctions For Violation of the Automatic Stay against Embry Riddle Aeronautical University ("Embry Riddle"). After a hearing held on October 26, 2005, the Court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Embry Riddle is a private university specializing in aviation and aerospace.

2. From September 2001 to the Fall of 2002, Debtor attended Embry Riddle at its Daytona Beach Florida campus. On October 25, 2002, Debtor withdrew from the university.

3. Upon his withdrawal from Embry Riddle, Debtor was indebted to the university for approximately $2,459.00 in educational benefits received through a Federal Direct Unsubsidized Stafford Loan. At the time of the hearing, Debtor had not yet repaid the loan.

4. On September 12, 2005, Debtor filed for relief under Chapter 7 of the bankruptcy code.

5. At the hearing, Debtor testified that although Embry Riddle was aware he had filed a petition in bankruptcy, it still refused to release his transcripts to him.

6. Embry Riddle has a standing policy, which applies to debtors and non-debtors, that states the university will withhold transcripts until all debts owed to the university by withdrawing students are paid in full. Debtor testified at the hearing that he signed several contracts that contained the policy stated above.

7. Debtor testified that he paid Embry Riddle the required fee to obtain his transcripts.

CONCLUSIONS OF LAW

The issue before the Court is whether Embry Riddle is in violation of either 11 U.S.C § 525 or 11 U.S.C. § 362 of the Bankruptcy Code by continuing to withhold the Debtor's transcripts, despite the knowledge that Debtor filed a petition in bankruptcy on September 12, 2005.

A. 11 U.S.C. § 525

11 U.S.C. § 525 prohibits a governmental unit that operates a student grant or loan program from discriminating against a debtor solely on the basis of his or her bankruptcy. As Embry Riddle is a private university, the Court finds that 11 U.S.C. § 525 is clearly not applicable in the instant case.

B. 11 U.S.C. § 362

Pursuant to 11 U.S.C. § 362(a)(6) the automatic stay prevents any act by a creditor, "to collect, assess, or recover a claim that arose before the commencement of the case…" Pursuant to 11 U.S.C. § 363(h), a debtor may pursue a claim for damages in instances in which a willful violation of the automatic stay is found to have occurred.

11 U.S.C. § 363(h) provides:

> "An individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorney's fees, and, in appropriate circumstances, may recover punitive damages."

Embry Riddle asserts that no violation of the automatic stay occurred, and that it maintains an absolute right to withhold delivery of Debtor's transcripts. In support of its position, Embry Riddle cites to a case in which a debtor unsuccessfully sought to compel Temple University to turnover transcripts that were being withheld for non-payment of a student loan. In re Billingsley, 276 B.R. 48, 53 (Bankr. D. N.J. 2002). In Billingsley, the court held that the collection of a nondischargeable debt is not stayed by 11 U.S.C. § 362.[1] Id. Specifically, the

[1] In this Court's opinion, the court in Billingsley erroneously relied upon a Supreme Court case which held that a bank did not violate the automatic stay by placing a temporary administrative hold on a bank account while it sought relief from the automatic stay to exercise its right of setoff. Citizens Bank of Maryland v. Stumpf, 116 S.Ct. 286 (1985). In Stumpf the Supreme Court stated a critical factor in its decision was that the administrative hold was not intended to be permanent, but only intended to continue so long as it was necessary to ask the bankruptcy court for relief from the stay. Id. However, the

court stated that, " …Temple University's withholding of the transcripts is merely a refusal to perform on a promise to create and deliver a record of the debtor's academic performance. Such conduct is wholly consistent with the very purpose of the automatic stay: "to maintain the status quo that exists at the time of the debtor's bankruptcy filing." Id.

In opposition to Creditor's argument, Debtor asserts Embry Riddle has committed a violation of the automatic stay, by refusing to turn over his transcripts. As discussed below, various courts around the country have held that it is a violation of the automatic stay for a university to withhold a student debtor's transcripts.[2]

" A violation of 11 U.S.C. § 362 arises when a pre-petition creditor withholds a student debtor's transcript." Merchant v. Andrews University, 958 F.2d 738 (6th Cir. 1992). In addition to holding that it is a violation of § 362 to withhold a debtor's transcripts, the court in Andrews also held that educational loans are not an exception to the automatic stay. Id. at 743. The court stated that the automatic stay to creditors of student loans stays in effect until "(1) the case is closed, (2) the case is dismissed, or (3) a discharge is granted or denied." Id.

In a similar case, a bankruptcy court held that although § 525 was not applicable, as the school that withheld the transcripts was not a state school, the school was in violation of § 362 for withholding the debtor's transcripts. In re Ware, 9 B.R. 24 (Bankr. W.D. Mo. 1981).

Additionally, a bankruptcy court in the Northern District of Georgia, held that the University of Georgia's policy to withhold a debtor's transcript, in an effort to collect a loan, was a violation of the automatic stay provision of § 362 as well as a violation of § 525. In re Reese, 38 B.R. 681 (Bankr. N.D. Ga. 1984). The court in Reese also found the university's argument, that the automatic stay had not been violated because the loan would be nondischargeable in the event Debtor were to fail to complete her Chapter 13 payments, to be without merit. Id. at 683. The court correctly reasoned that it found the university's argument, "unconvincing given the importance of Debtor's transcript to her endeavor to finding employment or to continue her education." Id.

Although not binding authority upon this Court, the Court finds the cases that have held it is a violation of 11 U.S.C. § 362(a)(6), for a university to withhold a debtor student's transcripts, to be very persuasive. Thus, based upon the above mentioned cases, as well as this Court's own reading of § 362, the Court finds that Embry Riddle violated the automatic stay when it refused to release Debtor's transcripts to him.

CONCLUSION

The Court holds that Embry Riddle is in violation of 11 U.S.C. § 362(a)(6) and the university is ordered to immediately release Debtor's transcripts, as Debtor has already paid the customary fee. However, the Court does not find that Embry Riddle committed a willful violation of the automatic stay and therefore monetary sanctions are not merited. The Court also finds that since Embry Riddle is a private university that 11 U.S.C. § 525 is not applicable in the instant case. A separate judgment will be issued in accordance with these Findings of Fact and Conclusions of Law.

Dated this 19 day of December, 2005, in Jacksonville, Florida.

/s/ George L. Proctor
George L. Proctor
United States Bankruptcy Judge

Copies to:
Richard R. Thames
Gordon P. Jones
Debtor
United States Trustee

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court in Billingsley ignored the requirement that the creditor must promptly file a motion for relief from stay. In re Billingsley, 276 B.R. at 53.

[2] The courts in the following list of cases held that the withholding of a debtor's transcripts, by a university, is a violation of the automatic stay: In re Gustafson, 111 B.R. 282 (Bankr. 9th Cir.1990), rev'd. on other grounds 934 F.2d 216 (9th Cir.1991); In Re Parham, 56 B.R. 531 (Bankr.E.D.Va.1986); In re Reese, 38 B.R. 681 (Bankr.N.D.Ga.1984); In Re Ware, 9 B.R. 24 (Bankr.W.D.Mo.1981); In re Heath, 3 B.R. 351 (Bankr.N.D.Ill.1980); In re Howren, 10 B.R. 303 (Bankr.D.Kan.1980).